Filed 9/12/16 In re Brian S. CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re Brian S., a Person Coming Under the Juvenile Court Law.	B267683 (Los Angeles County Super. Ct. No. MJ22547)
THE PEOPLE, Plaintiff and Respondent, v. BRIAN S., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Denise McLaughlin-Bennett, Judge. Affirmed.

Mary Bernstein, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Andrew S. Pruitt, Deputy Attorneys General, for Plaintiff and Respondent.

This is the second appeal we have addressed in this matter. In the prior appeal, we reversed the juvenile court's finding that minor and appellant Brian S. committed assault with a deadly weapon, and we directed the court to reduce the finding to simple assault. (*In re Brian S.* (May 19, 2015, B255270) [nonpub. opn.] (*Brian I*).) On remand, the court complied with our order and also ordered Brian to pay victim restitution. Brian now appeals that restitution order. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual background

We adopt the factual background as stated in *Brian I*:

"On February 21, 2014, Jesse O'Rourke had a barbeque at his home.[1] Brian (the minor) and his brother, Joseph, were present. An argument between 'David' and 'Andrew' caused O'Rourke's wife to ask Andrew, Brian, and Joseph to leave. To make sure they left, O'Rourke followed them outside.[2] Brian, Joseph, and Andrew were in the driveway, talking. When O'Rourke spoke to Andrew about what had happened, Brian got 'lippy,' saying he didn't have to listen to O'Rourke. O'Rourke told Brian to ' "have a little respect and leave." '

"Joseph pulled O'Rourke to the ground and kicked him. Brian 'straddled' O'Rourke, as Joseph continued to kick O'Rourke.[3] O'Rourke did not know what Andrew was doing. O'Rourke was stabbed once. He did not see a knife or who stabbed him, but he told people that Brian stabbed him.

"Gregory Jordan was present that night. He ran outside after hearing that O'Rourke was 'getting jumped.' He saw Joseph kicking O'Rourke. Brian was hunched over O'Rourke's 'middle hip area.' Andrew was also hunched over O'Rourke, and

---

1 "O'Rourke was 'buzzed,' having drunk four 'jager bombs.' "

2 " 'Josh' also left, but he went straight to the car."

3 "O'Rourke also said that Brian 'was kneeled on one knee kind of his whole body. His legs weren't over the top of me, just his – his arms.' "

Andrew was throwing punches downward. As soon as Jordan ran out, the boys 'scattered.' Jordan chased Brian, who said 'it wasn't him,' he wouldn't 'stab a brother.'

"Ahron Rodriguez arrived at O'Rourke's about noon. Brian and Joseph arrived 'way later.' Rodriguez saw 'parts' of the argument between Andrew and David.[4] Rodriguez did not think that Brian and Joseph were present during the argument. After the argument, Andrew left, but he came back with Brian and Joseph.[5] When someone called out that O'Rourke was getting jumped, Rodriguez ran outside and saw Joseph kicking O'Rourke and Brian hunched over O'Rourke's chest. Andrew was 'next to [O'Rourke's] legs.' " (*Brian S.*, *supra*, B255270, at [pp. 2-3].)

II. Procedural background

On February 25, 2014, a petition under Welfare and Institutions Code section 602[6] was filed against Brian alleging assault with a deadly weapon, a knife (Pen. Code, § 245, subd. (a)(1)). The petition also alleged that Brian personally inflicted great bodily injury (Pen. Code, § 12022.7, subd. (a)). At the adjudication hearing, the juvenile court thought it "more reasonable to believe" that Andrew, not Brian, stabbed O'Rourke. The court therefore found that Brian aided and abetted an assault with a deadly weapon, and found not true the personal infliction of great bodily injury allegation. The court declared Brian a ward of the court, removed him from his parents' custody, and placed him in Camp-Community Placement for six months. The court declared the offense to be a felony and set the maximum term of confinement at four years. The court imposed probation

---

[4] "Rodriguez thought that Andrew and David argued about a bottle of vodka."

[5] "Rodriguez's testimony is unclear. After saying that he didn't think Brian and Joseph were present during the argument, Rodriguez was asked whether he saw them 'inside the house at any point?' Rodriguez answered, 'Yes, I did. I think Andrew had left and he came back with them.' When Rodriguez was then asked if Brian and Joseph left with Andrew, Rodriguez answered, 'They were all outside and [O'Rourke] was outside telling them to leave.' "

[6] All further undesignated statutory references are to the Welfare and Institutions Code.

conditions, including the requirement that Brian pay victim restitution in an amount to be determined.

Brian appealed. While that appeal was pending, Brian was released from camp and placed under the supervision of a probation officer. The Victim Compensation and Government Claims Board prepared a "certification of records for restitution hearing" indicating it paid $28,556.15 to O'Rourke, the victim.

We then issued our opinion in Brian's appeal. (*Brian I.*) We held that there was insufficient evidence Brian aided and abetted an assault with a deadly weapon and that the juvenile court relied on that factually inadequate theory. We therefore instructed the juvenile court to enter a new finding for simple assault. The court complied with our order. After briefing, the court ordered Brian to pay restitution to O'Rourke in the amount of $28,556.15. The court found that "not only did [Brian] hit the victim, but he straddled the victim, meaning keeping him pinned down. Whether or not it was successfully proven by the People that he knowingly aided and abetted the third individual that actually stabbed [O'Rourke], [Brian's] conduct did contribute in this court's mind to the victim being stabbed . . . . I don't see that as a minute, small or theoretical contribution to the injury that this victim sustained."

DISCUSSION

Brian appeals the restitution order, contending it violates *Brian I.* We review that order for abuse of discretion, which will be found only when there is an absence of a factual and rational basis for the order. (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.) As we explain, the juvenile court did not abuse its discretion in ordering Brian to pay victim restitution.

California's Constitution entitles a victim to restitution. (Cal. Const., art. I, § 28, subd. (b)(13); *People v. Lockwood* (2013) 214 Cal.App.4th 91, 95.) Section 730.6 governs restitution in the juvenile context, and that section parallels Penal Code section 1202.4, which governs adult restitution. (*In re Johnny M., supra*, 100 Cal.App.4th at p. 1132.) Section 730.6 provides that "a victim of conduct for which a minor is found to

be a person described in Section 602 who incurs an economic loss as a result of the minor's conduct shall receive restitution directly from that minor." (*Id.*, subd. (a)(1).) Stated otherwise, the economic loss "must be 'as a result of the minor's conduct.' " (*In re A.M.* (2009) 173 Cal.App.4th 668, 673.) Although "[t]his is [the] language of causation," nothing in section 730.6 requires that the minor be the sole cause of the victim's loss. (*In re A.M.*, at p. 673.) Rather, a minor's act "causes" the loss if his or her act was a substantial factor in causing injury. (*Ibid.*; *People v. Foalima* (2015) 239 Cal.App.4th 1376, 1396.) " 'A substantial factor is more than a trivial or remote factor.' " (*In re A.M.*, at p. 673.) Even a very minor force that causes harm is a substantial factor. (*Lockwood*, at p. 103.) But an act that plays only an infinitesimal or theoretical part in bringing about injury, damage or loss is not a substantial factor. (*Ibid.*)

Here, it is unknown who stabbed O'Rourke. It could have been Brian, Joseph or Andrew. But a finding that Brian stabbed O'Rourke is unnecessary to the imposition of restitution. So long as Brian engaged in an act, even a minor one, that caused O'Rourke's injury, restitution is proper. There is more than substantial evidence that Brian engaged in such an act. He straddled O'Rourke, who had been pulled to the ground. While Brian straddled O'Rourke, Joseph (Brian's brother) kicked O'Rourke and someone stabbed him. Brian's act of holding O'Rourke down played neither an infinitesimal nor a theoretical part in bringing about O'Rourke's stabbing injury. To the contrary, Brian's conduct (simple assault) facilitated it. (See *In re A.M.*, *supra*, 173 Cal.App.4th at pp. 673-674 [minor's inexperience and lack of driving skills was a substantial factor in causing pedestrian's death];[7] *People v. Lockwood*, *supra*, 214 Cal.App.4th at p. 104 [defendant's domestic abuse was a substantial factor in causing victim's subsequent suicide attempt].)

---

[7] Although restitution in *In re A.M.* was imposed as a condition of probation, the court analyzed the issue under section 730.6. (*In re A.M.*, *supra*, 173 Cal.App.4th at pp. 670, 673.)

Brian, however, suggests that the stabbing was an independent intervening cause of O'Rourke's injury. An independent intervening cause must be " ' " ' "unforeseeable . . . an extraordinary and abnormal occurrence, which rises to the level of an exonerating, superseding cause." . . . On the other hand, a "dependent" intervening cause will not relieve the defendant of criminal liability. "A defendant may be criminally liable for a result directly caused by his act even if there is another contributing cause. If an intervening cause is a normal and reasonably foreseeable result of defendant's original act the intervening act is 'dependent' and not a superseding cause, and will not relieve defendant of liability. [Citation.] '[ ] The consequence need not have been a strong probability; a possible consequence which might reasonably have been contemplated is enough. [ ] The precise consequence need not have been foreseen; it is enough that the defendant should have foreseen the possibility of some harm of the kind which might result from his act.' " ' " [Citation.]' " (*People v. Foalima*, *supra*, 239 Cal.App.4th at p. 1397.) Here, it may not have been precisely foreseeable that someone would stab O'Rourke. But that O'Rourke would be seriously injured certainly was foreseeable. The stabbing therefore was not an independent intervening cause.

Nor do *Brian I* and the law of the case doctrine preclude the restitution order. The law of the case doctrine holds that when an appellate opinion states a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to through its subsequent progress in the lower court and upon subsequent appeal. (*People v. Ramos* (1997) 15 Cal.4th 1133, 1161.) The juvenile court's restitution order did not "hark back" to its now debunked "aiding and abetting finding" or otherwise violate any principle or rule of law we stated in *Brian I.* As we said, the court's restitution order was instead based on a finding that Brian straddled or restrained O'Rourke, which conduct was a substantial factor in causing O'Rourke's injury.

We need not address Brian's additional argument that restitution could not be imposed as a condition of probation. Restitution was imposed under section 730.6, not as a condition of probation.

DISPOSITION

The request for judicial notice of the appellate record in *Brian I* is granted. The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

EDMON, P. J.

STRATTON, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.